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Letter dated 11 December 2008 from the Permanent Representative of Serbia to the United Nations addressed to the President of the Security Council

I have the honour to forward, enclosed herewith, the report of the Republic of Serbia on cooperation with the International Criminal Tribunal for the Former Yugoslavia (see annex).

I would appreciate it if you would have the letter and the enclosed report circulated as a document of the Security Council.

(*Signed*) Pavle **Jevremović**
Ambassador
Permanent Representative

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Annex to the letter dated 11 December 2008 from the Permanent Representative of Serbia to the United Nations addressed to the President of the Security Council

Report on cooperation with the International Criminal Tribunal for the Former Yugoslavia

SUMMARY

Standing of the Republic of Serbia is that the cooperation process between the Republic of Serbia and the ICTY can be described as constructive and successful, for the following reasons:

- The Republic of Serbia transferred 43 indictees requested by the ICTY. Among the accused transferred to the Tribunal are two former presidents of the Republic, former Prime Minister, three former Chiefs of the General Staff of the Yugoslav Army, former Chief of the Security Service and approximately ten military and police generals. The search for the two remaining ICTY indictees is being continued, while high financial rewards have been declared for the information leading to their capture.

- Out of the total number of the ICTY Office of the Prosecutor's (OTP) 1743 Requests for Assistance (RFAs) related to the production of documents, more than 98% were produced in their entirety, while all the rest of the recent RFAs are undergoing the realization procedure.

- According to the modalities defined in the Proposal on principles and modalities of the access to the State archives (2006), twenty-six visits of the OTP's representatives to the Republic of Serbia State archives have been conducted till the present, including here the visits to the military archives, the Security Information Agency (BIA) and the Ministry of the Interior (MUP). Not one Tribunal's request for accessing the state archives has been denied.

- From the period from June 2007 till the present, seventeen visits of the Legal Defense Teams to the Republic of Serbia State archives have been conducted. Not one Legal Defense Teams' request for accessing the state archives has been denied.

- All witnesses for which the ICTY OTP and the Legal Defense Teams requested waivers in order for witnesses to give testimonies in the Tribunal's proceedings have been given waivers.

- Every of the ICTY OTP's summonses or other Tribunal's documents in writing have been distributed to the individuals residing on the territory of the Republic of Serbia.

- Every of the OTP's Requests for witness protection, in cases where witnesses were residing on the territory of the Republic of Serbia, has been realized.

- Conditions set out for the accused in relation to their provisional release have been respected impeccably and at all times, while the accused have been transferred to the Tribunal, without exclusion, in accordance with the time frames postulated by the ICTY trial chambers' decisions.

- 258 individuals suspected for criminal offences against the International humanitarian law have been processed to date before the War Crimes Chamber of the Belgrade District Court.

I INTRODUCTION

In order to complete its international obligations and to establish full cooperation with the International Criminal Tribunal for the former Yugoslavia (hereinafter: the ICTY or the Tribunal), the Republic of Serbia has adopted set of regulations, established new governmental agencies and complemented the already existing governmental bodies with new departments and units.[1]

The means of cooperation between the Republic of Serbia and the ICTY are the following: production of documents to the Tribunal; waivers provision for the witnesses requested by the Tribunal (for the witnesses who, during the time of their testimonies could, by the information obtained while performing some particular function or while participating in some particular event, disclose a state or a military secret); delivery of the summonses and other Tribunal's documents in writing to the individuals residing on the territory of the Republic of Serbia; protection of the witnesses and their families; supervision of the accused who are granted provisional release and who are at the time of release residing at the territory of the Republic of Serbia; correspondence and direct contacts with the Office of the Prosecutor (hereinafter: OTP), the Registry and the President of the ICTY, including here the issues regarding technical assistance; support and cooperation in search for the accused who are still at large and their transfer to the Tribunal; other means of cooperation, such as the direct form of cooperation between the Republic of Serbia Office of the War Crimes Prosecutor and the ICTY OTP through the exchange of the electronic databases of the two Offices and the like.

II COOPERATION REGARDING PRODUCTION OF DOCUMENTS, ACCESS TO THE ARCHIVES, WITNESSES AND OPERATIONAL ACTIVITIES

II.1. PRODUCTION OF DOCUMENTS TO THE TRIBUNAL

Since the commencement of cooperation between the Republic of Serbia and the ICTY, the Republic of Serbia has received 1743 Requests for Assistance from the ICTY OTP. The aforementioned RFAs have related to the documentation needed for the OTP's preparation in the proceedings before the Tribunal, visits to the State archives of the Republic of Serbia, and waivers of the OTP's witnesses. The Republic of Serbia has produced complete replies to more than 98% of the total number of the RFAs received, while it has been estimated that only few

[1] See: Annexes to the Report of the Republic of Serbia on cooperation with ICTY, May 2008.

RFAs are still pending. It is important to explain that some of the pending RFAs are considered to be of a newer date, taking into consideration the fact that these requests have been received in the course of the last 30 days and thus could not have been concluded. In addition, sometimes the OTP's RFAs tend to be of a large scale and very imprecise about the documents requested, which also may be used as an explanation of their pending status.[2] New RFAs are being received on an everyday basis and are taken into consideration without delay.

From 1 January 2008 till the end of November 2008, the Republic of Serbia has replied to the 93 RFAs in regard to the production of documents, replies and data, while it is important to put emphasis on the fact that several thousand pages of documentation have been produced in relation to these RFAs.

In addition, Legal Defense Teams of the accused before the ICTY also submit their RFAs to the Republic of Serbia regarding the production of documents and replies from the state departments. Out of the total number of 660 Legal Defense Teams' RFAs in the period from the end of 2004 till the present, most of the RFAs have been resolved completely, while the rest of the recent RFAs are in the process of realization. These documentation is also at the disposal of the OTP.

II.2. Access to the State Archives of the Republic of Serbia

Due to Arrangement on principles and modalities of the access to the State archives, signed in March 2006, archives of the Ministry of Defense, Presidency of Serbia, Government of the Republic of Serbia, Security Information Agency (BIA), Ministry of the Interior, and other State institutions have become accessible to the OTP's professionals. Total number of the Tribunal's representatives visits to the State archives of the Republic of Serbia in the period from May 2006 till the present has been 26, and non of them has been denied.. The purpose of the activities described has been easier access, better insight and precise selection of the documents needed for the OTP's proceedings research and preparation before the ICTY. The access to the State archives of the Republic of Serbia has been conducted on a regular basis, with full cooperation of the State institutions representatives and in accordance with the modalities agreed in the Proposal.

II.3. Witnesses – waivers in relation to state and/or military secret

In order for some witnesses to appear before the ICTY and give their testimonies in the particular proceedings (and especially in cases when the witnesses summoned by the OTP had participated in certain events as active personnel of the military or police units, political figures, members of the government etc.), the Government of the Republic of Serbia needs to produce waivers in relation to certain topics that are requested by the OTP and in order for the

[2] These particular RFAs are consisting of the constructions describing the requested documentation as '*all* documentation relevant to...and/or *all* documentation pertaining to...' some particular period and/or field of interest, without precise definition of the documents sought and disregarding the possibility of the OTP's access to the Republic of Serbia State archives in accordance with the modalities defined in the signed Agreement.

witnesses take part in the Tribunal proceedings. Since the establishment of the National Council for Cooperation with the ICTY till present, more than 500 witnesses were given waivers in relation to state/military secrets, which enabled them to testify before the ICTY.

From 1 January 2008 till the end of November 2008, 33 witnesses and 4 suspects have been given waivers according to the ICTY OTP's RFAs, while 4 individuals were summoned according to the ICTY's subpoenas. Even in case the number of the individuals given waivers in 2008 and summoned by the OTP does not seem to be high, it actually corresponds to the exact number of the witnesses requested by the OTP in this period. In conclusion, every individual that was of interest of the OTP was enabled on behalf of the responsible Serbian authorities to make contact with the OTP's staff and provide necessary aid requested in the aforementioned period.

II.4. OPERATIONAL ACTIVITIES

Activities of the Republic of Serbia's Ministry of the Interior and other security services in relation to the cooperation with the ICTY include, among others, the following:

- **Search for the individuals indicted before the ICTY** –from June 2007 till November 2008, personnel of the Ministry of the Interior has participated in the activities related to locating the ICTY indictees that are still at large, as well as in the activities related to the exchange of information with the Republic of Montenegro's Ministry of the Interior that resulted in the apprehension of the accused Vlastimir Djordjević in Montenegro on 17 June 2007. In 2008, Stojan Župljanin and Radovan Karadzić were arrested in Serbia.

- **Realization of the RFAs related to identification, locating, distributing Tribunal's orders and providing presence of the witnesses in the ICTY proceedings** – from June 2007 till November 2008, the Ministry of the Interior acted upon three ICTY's Orders for contempt of the Tribunal, 60 summonses and four subpoenas related to the ongoing proceedings before the ICTY.

- **Supervision and reporting about personal safety protection and protection of the ICTY witnesses and their family members** - in the period described and following the OTP's orders, protection was provided to ten witnesses and members of their families. The protection was organized through cooperation of the Ministry of the Interior's Witness Protection Unit and other Ministry's departments. The witness protection in these cases was carried out without difficulty.

- **Transfer and supervision of the individuals granted provisional release; reporting about the fulfillment of the provisional release conditions** – from June 2007 till November 2008, the Ministry of the Interior's War Crimes Investigation Service supervised twelve of the accused before the ICTY who were or still are out of the ICTY Detention unit in accordance with the ICTY Trial Chambers' decisions. No problems occurred during these activities.

III ACCUSED AT LARGE. ARRESTS AND VOLONTARY SURRENDERS.

It is important to state that the Republic of Serbia transferred 43[3] indictees to the ICTY, including the individuals who performed duties of the President of the Federal Republic of Yugoslavia, President of Serbia, Vice President of the Federal Government, Vice President of the Government of Serbia, three Chiefs of the General Staff of the Yugoslav Army, Chief of the State Security Service, as well as numerous army and police generals.

Two of the accused before the ICTY are still at large: Ratko Mladić and Goran Hadzić.

The search for the remaining ICTY indictees continues on an everyday basis and the government authorities of the Republic of Serbia are constantly undertaking all necessary measures in order for the remaining fugitives to be transferred to the ICTY.

The period described in this Report includes arrests of two of the ICTY indictees. However, the search for Ratko Mladić and Goran Hadzić is still ongoing, while the last search was conducted in Valjevo in November 2008 in relation to the suspected aides of Ratko Mladić. Rewards are offered of one million euros for information that leads to the arrest of Ratko Mladic and one of 250.000 euros for information that could assist the apprehension of the accused Goran Hadzić.

Currently there are ongoing proceedings against the individuals indicted for aiding the hiding of Ratko Mladić and Stojan Župljanin before the Republic of Serbia's relevant justice departments.

IV WAR CRIMES TRIALS IN THE REPUBLIC OF SERBIA AND RESIDUAL FUNCTIONS OF THE ICTY

IV.1. NATIONAL WAR CRIMES TRIALS

The Republic of Serbia supports the idea of the ICTY's Completion Strategy, based on the Security Council Resolutions 1503 and 1534. Main condition for the Completion strategy to become feasible is the existence of the national judiciaries capable of processing criminal cases against the international law and humanity according to the international legal standards.

Since the establishment of War Crimes Chamber of the Belgrade District Court, the Republic of Serbia Office of the War Crimes Prosecutor and the War Crimes Investigation Service within the Ministry of Interior Affairs till the present, 258 individuals suspected for their involvement in war crimes on the territory of the former Yugoslavia have been processed to date[4]. These proceedings are

[3] 27 indictees surrendered voluntarily, 12 indictees have been arrested in the Republic of Serbia, 4 indictees have been arrested in with assistence and in cooperation with Serbian agencies.

[4] According to the Republic of Serbia Office of the War Crimes Prosecutor, 24 individuals have been convicted in the first degree, while 5 of these individuals were convicted in the second degree. Five individuals have been acquitted. 91 individuals have been indicted, while 133 persons are subject of investigation. Total number of victims in these proceedings is, at the present, 2154. 573 witnesses have been interviewed.

undergoing different phases - from the ones that are still in the phase of investigation, to those finalized in the second instance. The most known cases from this group are the following: case "Osvetnici", case "Štrpci", case "Ovčara", case "Zvornik", case "Škorpioni", case "Suva Reka" (the "Batajnica" Case"), case "Podujevo", case "the Bytyqi Brothers", "Anton Lekaj", "Ilija Jurišić" and case "Lovas". Both the War Crimes Chamber of the Belgrade District Court and the Republic of Serbia Office of the War Crimes Prosecutor have shown high level of professionalism and technical capability for processing the aforementioned cases in accordance with the international legal standards. The aforesaid was confirmed by the OTP on numerous occasions.

IV.2 REGIONAL COOPERATION

It should also be stated that the War Crimes Prosecutor Offices from Serbia, Montenegro, Croatia, and Bosnia and Herzegovina have been maintaining regular contacts and implementing efforts in order to improve regional cooperation. These efforts are based on a formally established means of cooperation through Memoranda of Understanding signed between the Republic of Serbia and the Republic of Croatia, Bosnia and Herzegovina and Montenegro. Direct form of cooperation between the Regional Prosecutors' Offices, which includes the exchange of evidence, documents and data relevant to the investigation of the war crimes cases, reflects common interest of Serbia, Bosnia and Herzegovina, Croatia and Montenegro for conducting more thorough investigations, identifications and prosecutions of all individuals suspected to be involved in criminal offences against the International humanitarian law.

With the support of Serbian state agencies, the District Court War Crimes Chamber has organized the conference "War Crimes Trials - Present Moment, Results, Perspectives" that was held on 2 December 2008 in Belgrade. Conference participants were representatives of the judiciaries of the Republic of Serbia, Republic of Croatia and Bosnia and Herzegovina, as well as the ICTY judges. This event represented additional opportunity for the participants to discuss further developments and cooperation improvements that would raise the standards of the trials for the war crimes perpetrated at the territory of the former Yugoslavia on higher level.

V OTHER ACTIVITIES

In April 2008, the President of the National Council for Cooperation with the ICTY addressed in writing the Chief Prosecutor of the ICTY, Mr. Serge Brammertz, and the United Nations Secretary General, Mr. Ban Ki-moon, calling for assistance in conducting the investigation about the alleged accusations that the kidnapped Serbs from Kosovo had been taken to Albania, where they were forced to go through surgical procedures intended for organ trafficking and that following the surgeries these individuals were murdered. More precisely, the ICTY former Chief Prosecutor, Ms. Del Ponte, stated in her book "The

Hunt. Me and the War Criminals" that the OTP commenced the investigation in this case, but that the investigation had to be ceased. Taking into consideration that 533 persons are still uncounted for according to the Republic of Serbia's Committee on Missing Persons' statistics and that their disappearance can be assigned to the "Kosovo Liberation Army", the destiny of the missing stands to be of great importance both for the members of the families of the missing and for the Republic of Serbia. Taking all of the aforementioned into account, the National Council for Cooperation with the ICTY has requested from the OTP re-opening of the investigation in this case, or, alternatively, that all evidence material collected in this case be produced to the Republic of Serbia departments in charge.

The National Council for Cooperation with the ICTY has organized a large number of round tables and conferences on subjects of cooperation between the Republic of Serbia and the ICTY, proceedings of the war crimes perpetrated on the territory of the former Yugoslavia, the significance of regional legal cooperation between the states for sentencing the war crimes perpetrators and the like. As an example of this, the Office of the National Council for Cooperation with the ICTY organized, in cooperation with the OSCE Mission in Serbia, the round table on 18 August 2008 in Zajecar with the topic "War Crimes Trials: Law and Justice". This round table was the first in the series of events that the Office of the National Council plans to organize in the future, following the intention to inform the general public about the significance of the cooperation with the ICTY and the importance of national trials for the war crimes perpetrated at the territory of the former Yugoslavia. Upcoming round tables will be organized in Bujanovac and Novi Pazar.

The National Council for Cooperation with the ICTY has published several publications on the following topics: basic legal acts that regulate the ICTY activities; cooperation of the states with the ICTY; and the war crimes trials in the region. In addition and in cooperation with the OSCE Mission in Serbia, the National Council initiated the publishing of the book "Guide through the ICTY: Regulations and Practice", which stands to be one of the most prominent publications that was printed at the territory of former Yugoslavia describing the work of the Tribunal.